(3)

No. 91-1326

In The

Supreme Court of the United States

OCTOBER TERM, 1991

THE DISTRICT OF COLUMBIA AND
SHARON PRATT KELLY, MAYOR,

Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF OF THE CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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The Connecticut Business and Industry Association ("CBIA") respectfully moves for leave to file the accompanying brief as amicus curiae in this case. Letters of consent from the Petitioners, the District of Columbia and Sharon Pratt Kelly, and the Respondent, the Greater Washington Board of Trade, have been filed with this motion.

INTEREST OF AMICUS

The Connecticut Business and Industry Association is the largest business and trade association in the State of Connecticut, having approximately 7,000 members who employ a total work force of over 700,000 employees. CBIA presents the views of its members on public policy and legal issues to legislative and judicial authorities.

Petitioners request Certiorari to overturn a decision of the District of Columbia Circuit. While agreeing with the Petitioners that this case warrants Certiorari, CBIA seeks an affirmance. The District of Columbia statute, which was held to be preempted by ERISA[1] in this case, was modeled on a Connecticut statute. Contrary to the D.C. Circuit's holding, the Second Circuit and the Connecticut Appellate Court have ruled that ERISA does **not** preempt the Connecticut statute.

CBIA's principal interest lies in having this Court resolve the conflicting lower court decisions in favor of the D.C. Circuit's analysis of ERISA preemption. The Connecticut statute imposes significant financial and administrative burdens on nearly all of CBIA's members. Furthermore, many of CBIA's members sponsor multi-state benefit plans which, despite ERISA's express goal of national uniformity, are now subject to disparate local regulations. Finally, the District of Columbia and Connecticut

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[1] The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S.C. §§ 1001-1461 (1988).

statutes represent only two applications of a growing trend among states to impose additional requirements on employers based upon their ERISA-protected plans. This trend adversely affects CBIA and its members.

For all the foregoing reasons, the Connecticut Business and Industry Association respectfully moves for leave to file the accompanying brief as amicus curiae.

Respectfully submitted,

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March 1992

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Other Authorities

INTEREST OF THE AMICUS CURIAE

The interest of the Connecticut Business and Industry Association in this case is set forth in the accompanying Motion for Leave To File Brief as Amicus Curiae.

REASONS FOR GRANTING THE WRIT

Summary of Argument

Special and important reasons, including a direct conflict between the D.C. and Second Circuits, support review on Writ of Certiorari of the decision below. Sup. Ct. R. 10.1.(1990). The goal of ERISA's[1] preemption provision "was to minimize the administrative and financial burden of complying with conflicting directives among States . . . ." *Ingersoll-Rand Co. v. McClendon*, __ U.S. __, 111 S. Ct. 478, 484 (1990) (citations omitted). At present, however, two federal circuit courts have rendered conflicting directives on the permissibility of the same form of state regulation. The D.C.[2] and Connecticut[3] statutes at issue in these cases require employers who give benefits to their active employees through ERISA-covered plans to provide the same level of benefits to employees eligible to receive workers' compensation. The direct conflict in the circuits over the viability of these statutes undermines the Congressional intent of "ensur[ing] that plans and plan sponsors would be subject to a uniform body of benefit laws . . . ." *Id.*

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1 The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S.C. §§ 1001-1461 (1988).

2 Workers' Compensation Equity Amendment Act of 1990 (D.C. Act 8-261) ("Equity Amendment Act" or "D.C. statute") (the relevant portion of which is codified at D.C. CODE ANN. § 36-307 (a-1); App. A1-A2).

3 Conn. Gen. Stat. § 31-284b (1991) ("Connecticut Statute") (App. A3).

The definitive split between the D.C. and Second Circuits articulates clearly the important federal issue to be resolved on Certiorari. While little would be gained by allowing for further development of this issue by the lower courts, much could be lost by permitting states to enact other laws that attach themselves to ERISA-protected plans. The D.C. statute typifies an emerging class of state laws that impose special burdens on employers based on the benefits provided in their ERISA-protected plans. Local governments find it administratively convenient to peg new benefit requirements to the level of benefits already being provided in ERISA plans. Thus, the District of Columbia and Connecticut statutes require employers to provide benefits to employees eligible for workers' compensation that are "equivalent" to those given in ERISA-protected plans to active employees. Similarly, states have used employers' existing ERISA benefit levels to define new requirements in other areas, including: plant closings, dependent coverage, family leaves, layoffs and other terminations. This trend defeats the congressional goals of uniform regulation and of encouraging employers to provide employee benefits.

To employers caught in this conflict, the administrative and financial costs are real. CBIA estimates that Connecticut employers who provide health insurance benefits to their active employees must pay an additional $20,315,000 each year to provide "equivalent" benefits to employees eligible for workers' compensation. Employers who change their ERISA plans face the administrative burdens of tracking subclasses of employees whose benefit levels were set based on the plan in effect when they first became eligible to receive workers' compensation. The easiest way for employers to avoid these added costs is to eliminate employee benefits altogether, which cures the problem but kills the patient. Yet for employers in Connecticut, where state and federal courts have upheld the analog to the District of Columbia statute, eliminating or reducing benefits to active employees may well be the only viable alternative -- unless this Court grants Certiorari.

Argument

I. THIS COURT SHOULD GRANT ITS WRIT TO RESOLVE A DIRECT CONFLICT BETWEEN THE DISTRICT OF COLUMBIA AND SECOND CIRCUITS

The Petition seeks review of an important issue regarding a federal statute, ERISA, over which circuit courts have differed. The decision below[4] and *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, _ U.S. _, 111 S. Ct. 1415 (1991) reached squarely conflicting results on whether ERISA preempted similar laws enacted in Connecticut and the District of Columbia. The D.C. Circuit's decision also conflicts with a ruling of the Connecticut Appellate Court, which adopted the Second Circuit's holding in *Donnelley*. *Tufaro v. Pepperidge Farm, Inc.*, 24 Conn. App. 234, 587 A.2d 1044 (1991).

For purposes of ERISA preemption, the Connecticut and D.C. statutes are indistinguishable. *GWBT*, 948 F.2d at 1324. Indeed, the District modeled its Equity Amendment Act on the Connecticut statute, Conn. Gen. Stat. § 31-284b (1991). *GWBT*, 948 F.2d at 1324, n. 22. Both laws require employers who sponsor ERISA-covered benefit plans for their active employees to provide equivalent benefits to employees eligible to receive workers' compensation. Both statutes also allow employers various options for complying with this requirement, including amending their ERISA plans, establishing separate plans, or self-insuring.

In *Donnelley*, the Second Circuit held that the Connecticut statute was "saved from preemption" by section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3). 915 F.2d at 792-94. Section 4(b)(3) exempts from ERISA "plan[s] . . . maintained solely for the purpose of complying with applicable workmen's compensation laws or

4 *Greater Washington Board of Trade v. District of Columbia*, 948 F.2d 1317 (D.C. Cir. 1991) ("*GWBT*")

unemployment compensation or disability insurance laws . . . ." 29 U.S.C. § 1003(b)(3) (1988) (App. A5). The Second Circuit focused on one feature of the Connecticut law: the employer's option to amend its existing plan for all employees or establish a separate plan only for employees receiving workers' compensation. The court compared this option to language in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). In *Shaw*, this Court observed that although a State may not require an employer to alter its ERISA plan, it "may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan." *Shaw*, 463 U.S. at 108.[5] The Second Circuit concluded that the Connecticut law simply put employers to the same choice authorized in *Shaw*. *Donnelley*, 915 F.2d at 793-94.

Unlike the Second Circuit, which relied heavily on *Shaw*, the D.C. Circuit distinguished *Shaw*. The D.C. court noted that the statute in *Shaw* related solely to plans exempt from ERISA – i.e. disability plans to provide benefits based upon weekly wages. *GWBT*, 948 F.2d at 1322-23; *see supra* at note 5. By contrast, the D.C. law relates to both ERISA-covered and exempt plans: it pegs the required benefits to levels set in ERISA-covered plans, and it allows employers to provide these benefits through separate, exempt plans. *Id.* The D.C. Circuit concluded that this distinction rendered *Shaw* irrelevant. *Id.* Thus, the D.C. and Second Circuits disagreed about the meaning and applicability of this Court's decision in *Shaw*.

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5 The New York Disability Benefits Law at issue in *Shaw* required that employers provide disability benefits of $95 per week or one-half the employee's weekly wages, whichever was less. N.Y. Work. Comp. § 204.2 (McKinney 1982-83)(described in *Shaw*, 463 U.S. at 90 n.4). Thus, the statute in *Shaw* did not piggyback onto any ERISA-covered plans by mandating certain benefits based on those given to active employees. *See* ERISA § 3(1), 29 U.S.C. § 1002(1) (1988); 29 C.F.R. § 2510.3-1(b)(1) (1991) (ERISA "employee benefit plan" defined not to include payment of weekly wages).

Moreover, the D.C. Circuit directly criticized the Second Circuit's analysis of the Connecticut statute, and flatly rejected the holding in *Donnelley*:

> [T]he Second Circuit focused on only half the story. By concentrating on how and in what ways the new workers' compensation plans would be exempt from ERISA coverage, the court failed to appreciate the fact that the Connecticut statute . . . related to an ERISA-covered plan by tying the new benefits to existing benefits and by limiting the law's applicability to employers already providing benefits through ERISA plans. The statute at issue in *Donnelley* is indistinguishable from the Equity Amendment Act. Based on a plain reading of ERISA, we disagree with the conclusion of the Second Circuit . . . .

GWBT, 948 F.2d at 1324-25. (footnotes omitted).

By granting its Writ, this Court can readily resolve the clear split between the Second and D.C. Circuits over the proper interpretation of *Shaw* and the correct analysis of ERISA preemption. Moreover, as explained below, important issues of federal law and policy strongly favor granting this Writ.

II. THE CASE BELOW PRESENTS SIGNIFICANT FEDERAL QUESTIONS WARRANTING REVIEW ON CERTIORARI

A. The Financial and Administrative Burdens Imposed by the D.C. and Connecticut Statutes Impel Employers to Eliminate Existing ERISA Plans or Forgo Establishing New Plans.

The D.C. statute and its Connecticut counterpart impose significant and direct financial burdens on employers who sponsor ERISA-covered employee benefit plans. CBIA estimates that in 1991, the cost to Connecticut employers of providing just the health insurance coverage mandated by the Connecticut statute was approximately $20,315,000.[6] While some employers might

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6 This cost estimate is computed as follows:

a. In 1991, the average per employee annual cost to Connecticut employers of providing health insurance was $4,232. Diane Levick, *Employer Health Costs Up*, Hartford Courant, January 28, 1991, at B1 (reporting on the Health Care Benefits Survey prepared by A. Foster Higgins & Co.).

b. The Connecticut Department of Labor estimates that the average Connecticut employee works 1,620 hours per year which, assuming a 7.5 hour workday, translates into 216 workdays per year. Thus, the cost to Connecticut employers of providing health insurance to employees in 1991 was approximately $20 per work day ($4,232 / 216 days).

c. Connecticut workers who were eligible for workers' compensation benefits experienced 1,231,200 days of absence from work in 1990 (the latest year for which such figures are available). *See* Conn. Dept. of Labor, *Connecticut Occupational Injuries and Illnesses Report* (1990).

d. 82.5% of Connecticut workers are covered by employer-provided group health insurance. Lewin/ICF, *Blue Ribbon Comm'n on State Health Insurance Proposal to Expand Access to Health Care in Connecticut* (March 1, 1990). Thus, it can be inferred that 82.5% of the days of absence described in c above were incurred with respect to such employees. Accordingly, approximately 1,015,740 days (1,231,200 days X 82.5%) of employer-provided coverage were mandated by the Connecticut statute in 1991.

e. Therefore, in 1991, the approximate cost to Connecticut employers of providing the health care benefits required by the Connecticut statute was $20,315,000. (1,015,740 days X $20).

voluntarily bear part of this expense (particularly for short-term absences), Connecticut allows for no choice in the matter.

In addition to the direct costs of the additional benefits, these piggyback laws impose several administrative burdens on sponsors of ERISA-protected plans. For example, both the D.C. and Connecticut statutes set the required benefits at the level provided when the employee first became eligible to receive workers' compensation. D.C. Code § 36-307(a-1)(3) (App. A1); *Gagnon v. Liberty Oil Equipment*, 7 Conn. Workers' Comp. Rev. Op. 81 (1989). Thus, each time an employer amends a benefit plan, it may create another subclass of employees with benefits that differ from those in the current plan. Over time in the volatile world of employee benefits, these subclasses may grow in number and range. Indeed, even after an employer terminates a plan or can no longer obtain coverage, it will remain liable to provide benefits defined by earlier plans to all of the subclasses of employees receiving workers' compensation. Furthermore, an employer must not only keep track of all of the subclasses of employees, it will probably have to self-insure the inactive employees because their benefit levels differ from the employer's current plan.

The administrative problems of tracking subclasses of employees are exacerbated in Connecticut, which sets no time limit on the employer's obligation to compensation-eligible employees. Unlike the D.C. statute, which caps the employer's obligation at fifty-two weeks, Connecticut ties the requirement to provide equivalent benefits solely to the employee's eligibility for workers'

compensation. Conn. Gen. Stat. § 31-284b(a) (1991) (App. A3). Since an employee who suffers a "partial permanent disability" may be eligible for compensation indefinitely, an employer's obligation under the Connecticut statute can continue for many years. *See* Conn. Gen. Stat. §§ 31-308(a), 31-308a (1991).

With the cost of providing health insurance benefits to employees rising at an alarming rate, employers are compelled to search for ways to reduce their health insurance expenditures. All too often the only viable alternative for employers is to reduce or even eliminate the health insurance benefits that they provide to employees. Since only employers who do not sponsor ERISA-covered plans are beyond the reach of the D.C. and Connecticut statutes, the statutes provide an additional incentive for employers to forgo creating or maintaining health plans. Moreover, since both statutes piggyback onto the benefit levels in ERISA-covered plans, employers who might otherwise provide generous benefits to active employees are unwilling -- or financially unable -- to do so. Thus, these statutes burden not only ERISA plan sponsors but also their active employee participants and dependents.

Accordingly, this Court should grant its Writ because of the substantial burdens that these statutes impose on ERISA plans.

B. The Petition Raises Serious Concerns Over the National Uniformity of Laws Applicable to ERISA-Covered Plans.

Unless this Court grants its Writ of Certiorari to resolve the conflicting rulings of the D.C. and Second Circuits, the Second Circuit opinion in *Donnelley* will continue to provide states with a road map for circumventing ERISA preemption with respect to piggyback laws in the areas mentioned in ERISA § 4(b)(3): workers' compensation, disability benefits, and unemployment compensation. Under the Second Circuit approach, states may premise and measure employers' obligations to provide these kinds

of benefits based upon the terms of each employer's ERISA-covered plan.

The District of Columbia, Connecticut, and other states have been drawn inexorably to regulate ERISA plans and plan sponsors. States do not ignore the already enormous and still growing economic stature of employee benefits and benefit plans. Administratively, states find the benefits prescribed in ERISA plans to be easy and logical targets. Thus, state laws often attempt to piggyback onto existing ERISA plans, imposing additional obligations that are pegged to benefits provided to active employees. For example, states have passed piggyback laws regarding family leaves, dependent coverage, plant closings, and employee terminations.[7]

This Court's decision in *Ingersoll-Rand* held that a state cannot premise a common law cause of action upon the existence of an ERISA-covered plan. 111 S.Ct. at 482-84. The case below presents a good vehicle through which this Court can make clear that

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[7] *See, e.g., family leave*: D.C. Code Ann. §§ 36-1301 to 36-1317 (1981 & Supp. 1991) (requiring employers to maintain existing health coverage on the same terms for employees who take family leave, and prohibiting loss of such employees' benefits accrued prior to the commencement of a family leave); N.J. Rev. Stat. Ann. §§ 34:11B-1 to 34:11B-8 (1988 & Supp. 1991) (requiring employers to maintain existing health coverage on the same terms for employees who take family leave; held preempted in *New Jersey Business & Indus. Ass'n v. State*, 249 N.J. Super. 513, 592 A.2d 660 (1991)); *dependent coverage*: Cal. Ins. Code § 10123 (Deering 1977 & Supp. 1992) (requiring extension of coverage to dependents if self-insured welfare benefit plan extends coverage to employee after termination); *plant closings*: Conn. Gen. Stat. § 31-51o (1991) (requiring employers to maintain existing group health coverage at employer cost for up to 120 days after a plant closing); Mass. Gen. L. ch. 175, §§ 110D, 110G; ch. 176A, § 8D; ch. 176B, § 6A; ch. 176G, § 4A (1990) (requiring continuation of existing group health coverage on the same terms for up to 90 days); *employee terminations*: Conn. Gen. Stat. § 38a-538 (1991) (requiring that employers, otherwise exempt from COBRA, 29 U.S.C. § 1161-1168 (1988), offer continuation of existing group health coverage); Nev. Rev. Stat. § 689B.245 (1991) (same).

the analysis in *Ingersoll-Rand* applies with equal force to state statutory law. Indeed, the prevalence of piggyback statutes demonstrates the need for this message.

The saga of the Connecticut and D.C. statutes tells a cautionary tale about states' desire to regulate ERISA-covered plans. Initially, Connecticut ordered employers to allow compensation-eligible employees to continue to participate in the employers' ERISA plans. When federal courts held that ERISA preempted Connecticut's forced inclusion of compensation-eligible employees,[8] the state enacted section 31-284b, which simply moved the same substantive requirement to another section of the Connecticut statutes and gave employers various options for compliance.[9] The District of Columbia, following the district court ruling in *Donnelley*, enacted the Equity Amendment Act modeled on the Connecticut statute. *GWBT*, 948 F.2d at 1324, n. 22. The most recent chapter of this tale -- the split between the D.C. and

8 *Stone & Webster Engineering Corp. v. Ilsley*, 690 F.2d 323 (2d Cir. 1982) *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983) held that Conn. Gen. Stat. § 31-51h (1981), the statutory predecessor to Conn. Gen. Stat. § 31-284b, was preempted by ERISA. The current Connecticut statute differs from its preempted predecessor in only one respect: the old law prohibited an employer from removing from its ERISA plan those employees who were eligible for workers' compensation, while the new statute gives the employer the option of keeping such employees in the plan or providing "equivalent" coverage through a separately administered plan.

9 The Connecticut Attorney General aptly summarized the legislative history of the Connecticut statute as follows:

> Section 31-284b was enacted for the purpose of bringing the requirements of section 31-51h into the Workers' Compensation Act *without substantive change*, in response to the District Court decision in *Stone & Webster*, [518 F. Supp. 1297 (D. Conn. 1981)].

1984 Conn. Op. Att'y Gen. 357, 361 No. 87-93 (emphasis added).

Second Circuits -- is not likely to be the last. Indeed, Connecticut continues to enforce its statute, and other states are likely to rely on the Second Circuit's permissive view of plan regulation and piggyback laws.

The split between the D.C. and Second Circuits creates particularly burdensome consequences for employers who sponsor ERISA-covered plans that extend to employees in several states. States now impose conflicting requirements on sponsors of multi-state plans. Moreover, the disparate requirements may grow: states may mandate benefits at levels that differ from the District of Columbia's and Connecticut's requirements (e.g., 80% of the coverage provided to active employees); they may set different mandatory time periods for providing these benefits (e.g., for up to one year of workers' compensation eligibility, as in the District of Columbia, or for the entire period of workers' compensation eligibility, as in Connecticut); or they may require employers to pay the same portion of the cost of coverage as they did when the employee was active (as in Connecticut) or to pay the entire cost of the mandated coverage (as in the District of Columbia). Furthermore, states may target other ERISA plan benefits (e.g., severance pay) as the basis for benefits mandated by statute. Thus, employers who sponsor multi-state benefit plans will not only be burdened by state-imposed obligations because of their ERISA-covered plans; they may well be burdened inconsistently by such obligations.

"Section 514(a) [of ERISA] was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit laws; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ingersoll-Rand*, 111 S. Ct. at 484 (citing *FMC Corp. v. Holliday*, __ U.S. __, 111 S. Ct. at 409; *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11 (1987); *Shaw*, 463 U.S. at 105, and n.25). By imposing an additional statutory requirement based upon the existence and terms of ERISA-covered plans, the D.C. and

Connecticut statutes "subject plans and plan sponsors to burdens not unlike those Congress sought to foreclose through [ERISA] § 514(a)." *Ingersoll-Rand*, 111 S. Ct. at 484.[10]

Blatant circumvention of preemption, which the District of Columbia and Connecticut have attempted and which the Second Circuit decision approves, will necessarily foil the Congressional goal of national uniformity in the regulation of ERISA-covered plans. The obvious option for employers to avoid state laws that piggyback onto the terms of ERISA-covered plans is simply to avoid these plans altogether. *FMC Corp.*, 111 S. Ct. at 408; *Fort Halifax*, 482 U.S. at 11. Ultimately, this will harm the very employees that Congress intended to protect.

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10 The enactment of COBRA (codified at §§ 601-608 of ERISA, 29 U.S.C. §§ 1161-1168 (1988), and § 4980B of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 4980B (1988)) further supports ERISA's broad preemption of this area. COBRA requires employers maintaining certain group health plans to offer covered employees and their dependents the opportunity to extend coverage, at the employee's cost, upon the occurrence of certain events. Unlike the D.C. and Connecticut statutes, COBRA is a comprehensive and procedurally complete statute. For example, COBRA coverage terminates when the employer discontinues health benefits to active employees and when the COBRA beneficiary becomes covered under any other group health plan or entitled to Medicare benefits. ERISA, § 602(2), 29 U.S.C. § 1162(2) (1988). The enactment of COBRA illustrates the role of ERISA's preemption provision in reserving to Congress the exclusive authority to regulate employee benefit plans.

III. CONCLUSION

For the reasons set forth above, CBIA respectfully requests that this Court grant the petition for Writ of Certiorari and affirm the decision of the D.C. Circuit.

Respectfully submitted,

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March 1992

APPENDIX

CONTENTS OF APPENDIX

D.C. Code § 36-307(a-1)

§ 36-307. Medical services, supplies, and insurance.

* * * * * * *

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide heath insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive worker's compensation benefits under this chapter.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 36-315.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

(5) An employer shall be reimbursed for the provision of health insurance coverage required by this subsection from t he special fund established in § 36-340. If an employer fails to provide health insurance coverage and an employee subsequently procures the insurance coverage and receives reimbursement for the procurement of insurance coverage from the employer pursuant to subsection (d) of this section, the employer shall be reimbursed from the special fund only for the amount that the employer would have paid for the coverage if the employer had provided the coverage.

Conn. Gen. Stat. § 31-284b

Sec. 31-284b. Employer to continue insurance coverage or welfare fund payments for employees eligible to receive workers' compensation. Use of second injury fund. (a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare fund, as defined in section 31-53, shall provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers'-compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury.

(b) An employer may provide such equivalent accident and health or life insurance coverage or welfare fund payments or contributions by: (1) Insuring his full liability under this act tin such stock or mutual companies or associations as are or may be authorized to take such risks in this state; (2) creating an injured employee's plan as an extension of any existing plan for working employees; (3) self-insurance; or (4) by such combination of the above-mentioned methods as he may choose.

(c) In the case of an employee welfare fund, an employer may provide such equivalent protection by making payments or contributions for such hours of contributions established by the trustees of the employee welfare fund as necessary to maintain continuation of such insurance coverage when such amount is less than the amount of regular hourly or weekly contributions for full-time employees.

(d) In the case where workers' compensation payments to an individual for total incapacity under the provision of section

31-307 continue for more than one hundred four weeks, the cost of such accident and health insurance or life insurance coverage after the one hundred fourth week shall be paid out of the second injury fund in accordance with the provisions of section 31-349.

(e) Such accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: medical, surgical, dental, nursing and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care.

ERISA § 4, 29 U.S.C. § 1003

§1003. COVERAGE.

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both

(b) The provisions of this subchapter shall not apply to any employee benefit plan if

(1) such plan is a governmental plan (as defined in sections 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under sections 410(d) of title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.